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14 UNITED STATES OF AMERICA
15
16 BEFORE THE NATIONAL LABOR RELATIONS BOARD
17

18 STEVEN LUCAS,

19 Charging Party,

20 and

21 JAMY RICHARDSON,

22 Charging Party,

23 and

24 ENCORE PRODUCTIONS, INC.,

25 Employer,

26 and

27 INTERNATIONAL ALLIANCE OF
28 THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS,
ARTISTS AND ALLIED CRAFTS OF THE
UNITED STATES, ITS TERRITORIES AND
CANADA, LOCAL 720, AFL-CIO, CLC,

Respondent.

Nos. 28-CB-107693; and
28-CB-113281

**RESPONDENT'S REPLY TO
CHARGING PARTY'S LIMITED
EXCEPTIONS**

1 1. The limited exceptions filed by Mr. Lucas illustrate precisely why the Board needs
2 to restrict any disclosure of hiring hall records to him.

3 2. Lucas' exceptions demonstrate precisely why the duty of fair representation does
4 not apply absent proof of an exclusive referral system. Lucas claims that there were three
5 botched dispatches. Nonetheless, none of these dispatches involved GES, the one employer about
6 whom the General Counsel put into evidence about the referral system. The record establishes an
7 exclusive relationship with that employer. In addition however, no evidence was presented as to
8 the other employers and the Board is precluded from finding that an exclusive arrangement
9 existed with any of the other employers. *United Mech. & Conveyor Millwrights Local No. 1102*,
10 322 NLRB 198, 203 (1996) and *Fisher Theatre*, 240 NLRB 678, 679 and 690 (1979).

11 3. Lucas seeks back pay for the alleged "botched referral" involving Caesars'. As
12 noted, there is no evidence that there was an exclusive hiring arrangement with Caesars'. Second,
13 as filed with the Administrative Law Judge, nothing was botched by the Union. Rather, what
14 happened was Lucas "was intentionally evasive with his availability and that evasiveness
15 contributed to the confusion as to his availability the next day." ALJD p. 8:1-2.

16 4. What actually happened is described in the ALJ's Decision. Lucas failed to
17 explain to the Respondent's dispatcher why he had canceled a job. He now argues in his limited
18 exceptions that he had a right to be dishonest because he has a right against self incrimination.
19 See exceptions page 4-5. The Fifth Amendment as a matter of law doesn't apply and in any case
20 Lucas is now asserting that he had a right to be evasive if not dishonest with the dispatcher. His
21 dishonesty led to the cancelling of the job because he deliberately didn't tell the dispatcher that he
22 was cancelling the job because he had taken another job with Caesars'. Mr. Lucas' limited
23 exceptions thus explain fully why the Union's action in this case didn't botch any referral; to the
24 contrary, Lucas botched the referral because it was cancelled and he was deliberately evasive with
25 the dispatcher.¹ He is at least correct when he characterizes the Administrative Law Judge as
26 "further denounc[ing] Lucas..." Exceptions p 5. She did so for good reason.

27 ¹ Lucas remains paranoid claiming that "Union dispatchers record telephone conversations with
28 Lucas and others while asking them incriminating questions, just so they can find a reason to levy
a fine, and make a referent ineligible for dispatch." Exceptions, p 3

1 5. Lucas argues that he is entitled to back pay. It is however clear that he didn't lose
2 any work because Caesars' hired him to another position. See Tr. 344-345. Additionally, the
3 General Counsel didn't seek back pay and Lucas' late claim for back pay is contrary to the
4 General Counsel's theory of the case which governs.

5 6. Lucas seeks to copy all of the referral records on "a portable storage device
6 [thumb drive]." Exceptions p. 7. This illustrates precisely why the respondent should not be
7 required to produce these records. If the respondent must produce these records electronically he
8 will have the ability to abuse those records by emailing them or otherwise forwarding them to
9 various persons. He can for example, forward all of them to employers who will then use the
10 information in an anti-competitive fashion. Other employers will not want to know whom they
11 call by name because this offers them a competitive advantage. Employees on the out of work
12 list or who otherwise can provide information to the Union for purposes of a referral wont want
13 their addresses and other private information disclosed particularly electronically. Furthermore
14 there is no evidence in the record that all the records are available electronically and thus could be
15 transferred. See Exceptions p. 6-7. Finally Lucas continues to want this information to pursue
16 litigation. There is no evidence his small claims court action was concerted. And the Board has
17 held that a union is not entitled to information to pursue litigation. *WXON-TV*, 289 NLRB 615
18 (1988). That rule should apply here.

19 7. Lucas asserts he is entitled to "all job referral/dispatch records..." Exceptions p 6.
20 As Respondent pointed out in its Exceptions this goes well beyond what the General Counsel
21 seeks and would encompass personal records of each member. This would include information
22 which Lucas insisted be redacted from the record. See Brief of Respondent in Support of
23 Exceptions, p. 21-23.

24 8. Lucas seeks the broad right of any referral to "review any past, present and future
25 Union dispatch records..." as noted, this ignores the fact that there is no evidence that there is an
26 exclusive referral system. Second, any referent may have the right to determine whether a
27 particular dispatch is done improperly and thus adversely affected him but certainly he doesn't
28 have the right to ensure in general that the "hiring hall is being operated in a fair and

1 undiscriminatory manner” (Exceptions page 7), as Lucas asserts. It doesn’t need to make its
2 records available to any person simply to ensure in general, how the hiring hall is being operated.
3 The only basis to make such records available is to allow the individual to make sure that when
4 he or she is signed up for work, the dispatching system is working fairly as to him or her. There
5 is no Board case that says any person is entitled to a general license to determine whether the
6 hiring hall is being operated fairly. Rather the duty of fair representation exists only requires that
7 the hiring hall records be available to the individual to determine whether he was fairly treated in
8 any particular circumstances.

9 9. Finally, Lucas requested that any fines be levied be reimbursed. There is no such
10 evidence of such fines.

11 10. Lucas is irresponsible. He caused the problem at Caesars’. He won’t take
12 responsibility for his own actions. Many employers don’t want to hire him. Nonetheless he
13 works and receives more referrals than other employees. He has a right to examine on a limited
14 basis, hiring hall records where he may have been affected. Because he was working most of the
15 time, he could not possibly have been affected by any referral issue.

16 11. The Supreme Court’s Decision in *Harris vs. Quinn*, 214 WL 292 1708 (2014)
17 reinforces the Union’s Exceptions that Nevada’s right to shirk law is unconstitutional as applied.
18 First, the Union members have a right to refrain from associating with Mr. Lucas. This is not only
19 a statutory issue but also a Constitutional issue. Second, to the extent that the Nevada right to
20 shirk law could be interpreted to require the Respondent to have a duty of fair representation
21 towards non-members this state action which violates the right of association of members. This
22 is thus invalid under *Harris v. Quinn, supra*. Third, the right of association includes the right not
23 to associate with Mr. Lucas. That right therefore means that the workers who are on the out of
24 work list do have the right to protect their privacy and association with Mr. Lucas by refusing to
25 have their information disclosed to him. Respondent is entitled to if not required to protect that
26 right.

1 12. For the reasons suggested in our Exceptions as well as suggested in this Reply to
2 Mr. Lucas' Exceptions, the decision of the ALJ should be rejected and the complaint be
3 dismissed.
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7 Dated: July 9, 2014

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

8 /s/ DAVID A. ROSENFELD

9 By: DAVID A. ROSENFELD
10 WILLIAM A. SOKOL
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1 **CERTIFICATE OF SERVICE**

2 I am a citizen of the United States and an employee in the County of Alameda, State of
3 California. I am over the age of eighteen years and not a party to the withing action; my business
4 address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501. I certify that on
5 July 9, 2014, the RESPONDENT'S REPLY TO CHARGING PARTY'S LIMITED
6 EXCEPTIONS document was served on the following parties as addressed below via E-Filing, E-
7 Mail and U.S. Mail:

8
9 Lisa D. Thompson, Administrative Law Judge
10 National Labor Relations Board
11 Division of Judges
12 901 Market Street, Suite 300
13 San Francisco, CA 94103-1779

14 ***Via E-Gov. E-Filing***

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25 I certify under penalty of perjury that the above is true and correct.
26 Executed at Alameda, California, on July 9, 2014.

27 /s/ Karen Scott

28

Karen Scott